Supreme Court, U. S.
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No. 76-670

In the Supreme Court of the United States

OCTOBER TERM, 1976

SECOND AVENUE LIMITED DIVIDEND HOUSING ASSOCIATION, ET AL., PETITIONERS

v.

CARLA A. HILLS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The petition for a writ of certiorari was filed out of time. The judgment of the court of appeals in this civil matter was entered on April 8, 1976 (Pet. App. B), and a petition for rehearing *en banc* was denied on May 25, 1976 (Pet. App. C). The time for filing a petition for a writ of certiorari was not extended and, accordingly, the 90-day period provided in 28 U.S.C. 2101(c) for petitioning in civil cases expired on August 23, 1976. The petition was filed on November 12, 1976.

The time limit imposed by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U.S. 399, 417-418. Accordingly, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JANUARY 1977.

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